



January 19, 2010

OSHA Docket Office
Technical Data Center
Room N-2625
Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

RE: OSHA Docket No. OSHA-2009-0023

Submission via electronic means

Docket Officer:

The American Industrial Hygiene Association (AIHA) expresses its appreciation to the Occupational Safety and Health Administration (OSHA) for the opportunity to comment on the Combustible Dust Advance Notice of Proposed Rulemaking (ANPR). The ANPR was published in the Federal Register on October 21, 2009 (Volume 74, Number 202) beginning on page 54333.

As the premier association of occupational and environmental health and safety professionals, AIHA members serve on the front line of worker health and safety. AIHA members, as well as employees and employers, rely on federal and state rules and regulations to improve the health and safety of the workplace and protect employees from hazards, including hazards associated with combustible dust. We applaud the agency for taking this step in proposing this ANPR.

AIHA appreciates the opportunity to work with OSHA to help achieve the mutual goal of protecting American workers and we look forward to further opportunities to work with the agency on this and similar issues and regulatory priorities.

If AIHA can be of any further assistance, please contact me. Thank you.

Sincerely,

Cathy L. Cole, CIH CSP
AIHA President

American Industrial Hygiene Association

Comments on

Combustible Dust

Advance Notice of Proposed Rulemaking

Need and Support for the Rule

The issue of protecting workers from the hazards associated with combustible dust has received increased urgency because of the 2008 explosion at a sugar refinery in Georgia that resulted in 14 worker fatalities and 60 workers seriously injured. Because of this catastrophic explosion, OSHA reissued its Combustible Dust National Emphasis Program (NEP) on March 11, 2008.

This reissued NEP increased enforcement activities and focused on specific industry groups that have experienced frequent combustible dust incidents. OSHA announced it would inspect facilities that created or handled combustible dusts which can cause burning or other fire hazards and can lead to explosions.

However, AIHA remains concerned this OSHA NEP did not go far enough in addressing this danger to workers. Following earlier similar explosions, the Chemical Safety and Hazard Investigation Board recommended OSHA issue a standard designed to prevent combustible dust fires and explosions in general industry. OSHA did not formally act on this recommendation other than the NEP and no other standard comprehensively addresses combustible dust explosion hazards.

AIHA remains concerned the OSHA Hazard Communication Standard (HCS) inadequately addresses dust explosion hazards and fails to ensure safe work practices and guidance is included in MSDSs. Because of this, AIHA believes there is an urgent need for further action from the agency to address this issue.

AIHA offered support for HR 849, a bill introduced in the House of Representatives in February 2009 that directs the Secretary of Labor to promulgate an interim final standard regulating combustible dusts and a final standard not later than 18 months after enactment of HR 849. AIHA is aware of the difficulty in enacting legislation requiring adoption of a combustible dust standard and is hopeful the agency will proceed with this rulemaking without further action by the Congress.

Comments and Recommendations

- **Can a single standard addressing combustible dust solve the problem?**

In 2006, the U.S. Chemical Safety Board recommended OSHA adopt a specific standard to control combustible dust explosions. In 2007, the agency began conducting a National Emphasis Program (NEP), with the final report on this NEP showing there were an unusually high number of general duty clause violations, indicating a strong need for a combustible dust standard. The agency determined the general duty clause was not as effective as a comprehensive combustible dust standard would be at protecting workers and began work on proposing a combustible dust standard.

However, it remains to be seen if a single combustible dust standard can be an effective way to protect workers from combustible dust explosions in all industries. AIHA recommends the agency consider all comments from the various industries impacted by combustible dust to be certain that a single combustible dust standard is workable in all industries. There may be considerable concerns that a single-industry standard will not be effective in controlling combustible dust explosions.

- **Design, Operation and Maintenance of Combustible Dust Collection Systems**

The AIHA Z9 Committee is currently involved in proposing an ANSI/AIHA Z9 Standard on Combustible Dust. This Standard will apply to dust control systems with combustible dust solids that are a fire, deflagration, explosion or detonation hazard. This Standard will augment the content of other Z9 Standards. Included in this Standard will be “prudent practice” regarding:

- a. Analysis of systems for combustible dust standards
- b. Design guidance to mitigate combustible dust hazards
- c. Maintenance recommendations to insure systems operate per original design intent

Engineering controls are one of the most effective ways to control combustible dust hazards.

AIHA believes the proposed rule should include requirements for the periodic inspection and maintenance of engineering controls and equipment, recordkeeping of the results of the inspections, and correction of any problems found during the inspections within a reasonable time.

AIHA hopes the agency will rely on the expertise afforded by professionals who serve on the AIHA/ANSI Z9 Committee as the agency moves forward in drafting a proposed rule.

- **Inspection of risk and use of third parties**

It is clear the best defense against combustible dust hazards is to control the origination of combustible dust. While many employers have taken it upon themselves to develop new ways to control ignition sources, it is unlikely employers will have the expertise to determine whether or not these controls are effective.

It is also unlikely the agency will have the number of qualified inspectors necessary to enforce any combustible dust standard. Finding an adequate number of qualified inspectors will also be difficult because of the many different industries involved and the differences among these industries.

Therefore, the use of third party evaluations would provide employers with the expertise needed to verify combustible dust controls. The use of third party occupational and environmental health and safety professionals, i.e., Certified Industrial Hygienists and Certified Safety Professionals, would provide employers with the necessary expertise to determine whether or not the controls designed by the employer are sufficient to control the hazards from combustible dust.

AIHA recommends the proposed rule contain language that affords the employer compliance with the standard if an independent third party evaluator has reviewed the worksite and certified compliance with the standard. AIHA offers our expertise to the agency in designing the qualifications necessary in designing a third party assessment program.

An additional AIHA recommendation is the proposed standard include a requirement that employers with the potential to produce a combustible dust hazard use a third-party laboratory to test and analyze the various production cycles to determine whether or not a combustible dust hazard is produced. Third-party laboratories should be independent of the employer and should be accredited by a nationally recognized accreditation body.